

Decision 05-04-041 April 21, 2005

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the Commission's Own Motion to Re-Examine the Underlying Issues Involved in the Submetering Discount for Mobile Home Parks and to Stay D.01-08-040.

Rulemaking 03-03-017  
(Filed March 13, 2003)

Order Instituting Investigation on the Commission's Own Motion to Re-Examine the Underlying Issues Involved in the Submetering Discount for Mobile Home Parks and to Stay D.01-08-040.

Investigation 03-03-018  
(Filed March 13, 2003)

**OPINION GRANTING INTERVENOR COMPENSATION  
TO THE UTILITY REFORM NETWORK FOR SUBSTANTIAL  
CONTRIBUTIONS TO DECISION 04-04-043 AND DECISION 04-11-033**

This decision awards The Utility Reform Network (TURN) \$101,093.04 in compensation for its contribution to Decision (D.) 04-04-043 and D. 04-11-033.

**I. Background**

A large number of mobilehome park (MHP) owners provide electricity and/or natural gas to their tenants through a master-meter.<sup>1</sup> In such cases, the MHP owner receives electricity and/or natural gas from the utility at a master-

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<sup>1</sup> MHP owners, as the term is used herein, are also referred to as "master-meter customers." A MHP served through a master-meter that serves tenants through submeters is referred to as a submetered MHP.

meter. The electricity and/or natural gas is then distributed to tenants through the MHP owner's distribution system, and a submeter located at each tenant's mobilehome. Each tenant is billed by the MHP owner for the usage recorded by the submeter.

Pub. Util. Code § 739.5 provides in pertinent part:<sup>2</sup>

“739.5. (a) The commission shall require that, whenever gas or electric service, or both, is provided by a master-meter customer to users who are tenants of a mobilehome park..., the master-meter customer shall charge each user of the service at the same rate which would be applicable if the user were receiving gas or electricity, or both, directly from the gas or electrical corporation. The commission shall require the corporation furnishing service to the master-meter customer to establish uniform rates for master-meter service at a level which will provide a sufficient differential to cover the reasonable average costs to master-meter customers of providing submeter service, except that these costs shall not exceed the average cost that the corporation would have incurred in providing comparable services directly to the users of the service.

(b) Every master-meter customer of a gas or electrical corporation subject to subdivision (a) who, on or after January 1, 1978, receives any rebate from the corporation shall distribute to, or credit to the account of, each current user served by the master-meter customer that portion of the rebate which the amount of gas or electricity, or both, consumed by the user during the last billing period bears to the total amount furnished by the corporation to the master-meter customer during that period.”

Section 739.5 requires MHP owners to charge the same rates for electricity and natural gas that would be applicable if the utility served the tenant directly.

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<sup>2</sup> All section references are to the Public Utilities Code unless otherwise indicated.

The utilities are required to provide the electricity and natural gas to the MHP owner at a discount. The discount is intended to reimburse the MHP owner for the reasonable average cost of providing submetered service. The discount is not to exceed the average cost that the utility would have incurred in providing comparable services to the tenant directly, which is avoided when the MHP is submetered.

In Rulemaking (R.) 03-03-017 and Investigation (I.) 03-03-018, the Commission planned to answer the following questions:

1. What are the components of the cost to a utility of directly serving MHP tenants, not already identified in D.95-02-090 and D.95-08-056, and which of them does a utility avoid if a MHP submeters its tenants?
2. Can the Commission set a uniform statewide rate structure and method to calculate the discount, and if so what cost figures or other issues of fact in dispute can parties present to resolve them?
3. Should the Commission revise the refunds ordered in D.01-08-040?
4. What mechanism should be implemented to ensure refunds, ordered in D.01-08-040, are appropriately made to MHP tenants?
5. Should the Commission explore beyond the conclusions reached in D.95-08-056 a fair and reasonable way to mitigate the cost to MHP owners of converting existing submetered systems to directly-metered service?
6. Should the Commission revise the methods and formulas by which refunds are currently paid to tenants by MHP owners?

The first question was addressed in D.04-04-043, in Phase 1 of this proceeding.

D.01-08-040 (reference in the third and fourth questions) was issued in Case (C.) 00-01-017, a complaint by MHP tenants alleging that a MHP owner violated § 739.5(a). The Commission found that the tenants' allegation was correct, and ordered refunds. At the time this proceeding was initiated, the issue of the refunds remained outstanding, and C.00-01-017 was consolidated with this proceeding. Subsequently, the parties in C.00-01-017 resolved the remaining issues among themselves, and asked the Commission to close the proceeding. By D.04-06-007, C.00-01-017 was separated from this proceeding and closed. Therefore, the third and fourth questions were resolved by the parties to C.00-01-017.

The Commission addressed threshold issues, and then addressed the remaining questions that were rewritten and organized as follows:

1. Should the Commission adopt a uniform statewide rate structure for the discount?
2. Should the Commission adopt a uniform statewide method to calculate the discount?
3. Are there fair and reasonable ways to mitigate the cost to MHP owners of converting existing submetered systems to directly-metered service?
4. Should the Commission revise the methods and formulas by which refunds are currently paid to submetered tenants by MHP owners?
5. Are there requirements that should be placed on MHP owners to ensure that the discounts are used to pay for the intended expenditures, to facilitate gathering data to be used in determining the MHP owners' costs in setting the discount rate, or for some other purposes?

In D.04-04-043, an interim decision, the Commission adopted the unopposed joint recommendation of seven of the parties. The joint

recommendation identified the categories of costs the electric and natural gas utilities incur when directly serving MHP tenants that are avoided by the utilities when the MHP is served through a distribution system owned by the MHP owner. These categories of costs are to be used in determining the amount of the discount provided by the utility to the submetered MHP owner as reimbursement for the cost of providing submetered service. The joint recommendation also identified categories of costs that are either not incurred by the utility when it directly serves MHP tenants, or are not reflected in utility rates for direct service. However, these costs are incurred by submetered MHP owners and may be separately charged to tenants if not otherwise prohibited.

Decision 04-11-033 was the final decision in this proceeding. It adopted the following requirements, and closed the proceeding.

1. The discount shall be set at the average cost that the utility would have incurred in providing comparable services to the tenant directly, which is avoided when the MHP is submetered.
2. The discount shall be determined in a general rate case, biennial cost allocation proceeding, or similar proceeding where the utility's revenue requirement and rates are set (revenue requirement proceeding). Between such proceedings, the utilities shall include a proposed revision to the discount in any utility filing proposing a revision to residential rates if the change in residential rates, or the data upon which the residential rate change is based, is sufficient to change the discount.
3. Any proposed settlement or stipulation in a revenue requirement proceeding, if the settlement or stipulation includes the discount, shall specify whether and how the discount is to be adjusted between such proceedings.
4. If the calculation of the discount and how the discount is to be adjusted between such proceedings is not specified in

- an adopted settlement or stipulation that includes the discount, the discount shall not be revised until the next such proceeding.
5. In any proceeding where the parties propose a settlement or stipulation that includes the discount, they shall specifically demonstrate that the proposed discount complies with § 739.5.
  6. The discount shall be set as an amount per space per day.
  7. The discount shall be calculated using a sampling method based on a statistically valid random sample, or using a marginal cost method. The specifics of any sampling or marginal cost method shall be addressed in the revenue requirement proceeding where the discount is set.
  8. Refunds shall be distributed to tenants pursuant to § 739.5(b), except that when the refunds by the utility are on a per-meter basis, the refunds to the tenants shall be on a per-submeter basis.
  9. Whenever a utility issues a refund to MHP owners through a reduction in the utility bill that should be distributed to tenants, the utilities shall: (1) identify the refund amount on the bill, and (2) explain how tenant refunds are to be calculated. If refunds are issued to MHP owners other than through the bill, the utilities shall identify the refund as such, and explain how to calculate tenant refunds.
  10. For special programs for which the above tenant refund distribution methodology would not be appropriate, the tenant refund distribution methodology shall be addressed in the proceeding in which the special program is authorized.
  11. When a tenant of a submetered MHP contacts a utility concerning the bill provided to the tenant by the MHP owner for electricity and/or natural gas, the utility shall at a minimum offer to provide information on how it calculates its bills, since the MHP owner is required to

- calculate tenant bills in the same manner, and on eligibility for programs for which the tenant may be eligible such as the California Alternate Rates for Energy (CARE) program. The utility shall also refer the tenant to the Commission's Consumer Affairs Branch, for resolution of complaints.
12. In their next revenue requirement proceedings, the utilities shall provide an analysis of the costs, benefits, and feasibility of providing bill calculation services to MHP owners. The utilities shall also provide examples of the appropriate tariff language, and an estimate of the rates necessary to recover the full costs of such services from the MHP owners.
  13. The motion, filed by the active parties on January 16, 2004, to establish a new proceeding to consider the issue of whether there are fair and reasonable ways to mitigate the cost to MHP owners of converting existing submetered systems to directly-metered service, is denied.

## **II. Requirements for Awards of Compensation**

The intervenor compensation program, enacted by the Legislature in §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers.

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)

2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate “significant financial hardship.” (§§ 1802(g), 1804(b)(1).)
5. The intervenor’s presentation must have made a “substantial contribution” to the proceeding, through the adoption, in whole or in part, of the intervenor’s contention or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)
6. The claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

### **III. Procedural Issues**

The prehearing conference in this matter was held on April 15, 2003. TURN filed its timely NOI on May 15, 2003. In its NOI, it asserted financial hardship. On June 10, 2003, Administrative Law Judge (ALJ) Jeffrey P. O’Donnell ruled that TURN is a customer under the Public Utilities Code, and that it meets the significant financial hardship condition. TURN filed its request for compensation on January 24, 2005, within the required 60 days of D.04-11-033. Therefore, TURN has satisfied the procedural requirements necessary to make its request for compensation.

### **IV. Substantial Contribution**

In evaluating whether a customer made a substantial contribution to a proceeding we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural



recommendations put forward by the customer? (See § 1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (See §§ 1802(i) and 1802.5.) As described in §1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.<sup>3</sup>

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution. With this guidance in mind, we turn to the claimed contributions TURN made to the proceeding.

#### **A. Substantial Contribution to D.04-04-043**

In D.04-04-043, the Commission adopted the unopposed joint recommendation of seven of the parties, including TURN. Decision 04-04-043 notes that the joint recommendation was the product of a staff-supervised

workshop, several rounds of comments, a number of prehearing conferences, and numerous other discussions among the parties. TURN represents that it was active throughout, and often served as the primary, if not exclusive, representative of consumer interests. TURN states that it participated in each of the four Phase 1 prehearing conferences, and devoted substantial time and effort to crafting, along with the other parties, the joint recommendation. TURN argues that, because D.04-04-043 adopts the joint recommendation without attributing any particular position on the issues to a particular party, it cannot point to language in the decision that reflects a TURN-specific substantial contribution. In light of the fact that the decision relies upon the extensive efforts by the parties, as reflected in the numerous prehearing conferences, various rounds of comments, and even more informal contacts among the parties as they sought to hammer out the joint recommendation, TURN submits that its active participation in those efforts suffices to demonstrate its substantial contribution to D.04-04-043.

As TURN represents, the joint recommendation was a compromise among the parties. TURN was an active participant in the interactions among the parties that led to the joint recommendation. Though D.04-04-043 does not attribute any portions of the joint recommendation to the positions of any parties, it is reasonable to assume that the joint recommendation represents TURN's recommendations at that time. This assumption is consistent with our analysis of prior settlements in which intervenors joined. Therefore, we find that TURN made a substantial contribution to D.04-04-043.

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<sup>3</sup> D.98-04-059, 79 CPUC2d, 628 at 653.

## **B. Substantial Contribution to D.04-11-033**

In D.04-11-033, the Commission addressed many additional MHP submetering issues, including discount-related procedural issues, discount calculation methodologies, the distribution of the discount to MHP owners, and consumer protections for submetered tenants. The Commission additionally required the utilities to explore the feasibility of providing bill calculation services to submetered MHP owners in their next revenue requirement proceedings. Finally, the Commission denied the joint motion of the active parties to establish a new phase of the proceeding to consider whether or not the Commission could or should do more to facilitate the conversion of submetered MHPs to parks directly metered by the utility. Except for this last issue, on which TURN's participation was limited, TURN represents that it contributed to D.04-11-033 by addressing each of these issues in testimony, at hearings, in briefs and in comments and reply comments on the Proposed Decision (PD).<sup>4</sup>

### **1. Discount Procedural Issues**

TURN states that it joined the vast majority of active parties in recommending that the Commission set the submetering discount rate in proceedings where the utility's revenue requirement is set. It also recommended that the discount only be changed between these proceedings whenever a change in residential rates is significant enough to change the discount due to recalculation of the diversity benefit adjustment. In addition, TURN argued that the Commission should require that parties proposing a settlement to specifically demonstrate that the recommended discount complies with § 739.5.

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<sup>4</sup> We agree that TURN's participation regarding conversion of submetered MHPs to direct service was very limited.

The Commission determined that the discount should be set in proceedings where the utility's revenue requirement is set; the discount can be updated between those proceedings only if the utility proposes a revision to residential rates, or the underlying data warranting the change is sufficient to change the discount. TURN states that these criteria are consistent with its recommendation. TURN also represents that the Commission agreed with its recommendation that the burden of demonstrating compliance with § 739.5, where settlements occur in the proceedings in which the discount is set, rests with the proponents of the settlement. D.04-11-033 adopted most of TURN's recommendations, as described above.

## **2. Calculation of the Discount**

D.04-11-033 adopted the joint recommendation of the active parties, including TURN, that the Commission should set the discount at the utility's avoided costs because MHP owners' records are unavailable to use in calculating the discount. D.04-11-033 also adopted TURN's recommendation that § 739.5 required the discount cap to be calculated based on the utility's costs of directly serving MHPs, and that § 739.5 precluded the adoption of a statewide discount rate. .

TURN recommended that the Commission require each utility to calculate the discount based on a MHP cost sampling study, and not adopt a discount calculation based on residential marginal customer costs (MCC) as a proxy for the average costs to the utility of directly serving MHPs. TURN argued that the Commission would violate § 739.5 by failing to account for the fact that MCCs and MHP average costs may vary significantly in the future. TURN also argued that if the Commission were to adopt a MCC method, it should not apply an

equal percentage marginal cost scaler because it would exacerbate the shortcomings of the MCC method.

The PD concluded that, while actual costs differences may exist, a discount calculated using residential MCCs would be within the range of uncertainty of a discount calculated using a sampling method. TURN argued that the PD erred in finding that the MCC method would always produce a discount substantially equivalent to the average costs of directly serving MHPs, and in finding that a general MCC-based discount would be an appropriate proxy for those average costs.

D.04-11-033 modified the PD to state that a particular marginal cost methodology based on the costs to serve residential customers as a whole, may not yield a result that is approximately the same as the costs incurred in directly serving MHP tenants. D.04-11-033 also provides that consideration of the specifics of a marginal cost method in the proceeding where the discount is set may include consideration of whether a particular marginal cost methodology based on the costs to serve residential customers as a whole, will yield a result that is approximately the same as the costs incurred in directly serving MHP tenants. Both of these modifications to the PD were based on TURN recommendations adopted, in part, in the decision.

### **3. Distribution of the Discount to MHP Owners**

TURN recommended adoption of a uniform \$/space/day discount rate structure for Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), San Diego Gas and Electric Company (SDG&E), and Southern California Gas Company (SoCalGas), and allow the smaller utilities to retain their current rate structures because they serve so few master-meter

customers in California. D.04-11-033 adopted a uniform statewide discount rate structure of \$/space/day for all utilities.

TURN recommended that the Commission ensure that the discounts are used to pay for the intended expenditures by modifying the residential master-meter tariffs to condition the submetering discount on master-meter customers' agreeing to place discount funds intended to cover physical equipment costs in escrow accounts. TURN states that, in response to its arguments, the Commission modified the PD such that D.04-11-033 includes a discussion of whether or not the Commission should place such requirements on MHP owners. The Commission determined that the escrow account condition TURN recommended was not necessary at this time, due to insufficient information in the record to demonstrate that MHP owners as a whole were failing to appropriately spend discount revenues on maintaining and improving their submetered systems. TURN states that, despite the Commission's failure to adopt TURN's escrow account recommendation at this time, it positively and significantly impacted D.04-11-033 on this issue. TURN states that it helped to develop a record regarding the benefits for submetered tenants of an escrow account requirement for MHP owners. TURN also states that its comments on the PD, which did not explicitly address this issue, insured that the final decision addressed the issue and assisted the Commission in avoiding a potential § 1705 challenge for not addressing the issue. TURN did not prevail in its recommendations regarding an escrow account requirement. However, it did contribute to the record regarding the issue, and ensured that the issue was not explicitly addressed in D.04-11-033.

#### **4. Consumer Protections for Submetered Tenants**

TURN states that it argued that the Commission should do more to protect submetered tenants who are uniquely vulnerable because they must rely on the MHP owner to pass on utility refunds, information about discount programs such as CARE, and to correctly calculate bills.

TURN recommended that the Commission adopt more rigorous refund and discount notification requirements and an enforcement mechanism such as spot-checking.<sup>5</sup> TURN also recommended that the Commission order the utilities to modify their master-meter tariffs to include language explaining how MHP owners are to distribute refunds and alerting MHP owners that the Commission can penalize them for failure to distribute rebates. In addition, TURN recommended that the Commission further explore the proposal of the Western Manufactured Housing Community Association (WMA) that the utilities assume meter reading and billing responsibilities in submetered MHPs, though it noted possible legal and technical hurdles.

TURN states that, while the Commission did not adopt its specific recommendations regarding spot-checking and new tariff language, D.04-11-033 required the utilities to clearly identify refunds that must be passed on to submetered tenants, whether distributed to MHP owners through a bill or otherwise, and explain how tenant refunds are to be calculated. TURN also states that D.04-11-033 determined that tariff revision proposals are best raised in the utilities' revenue requirements proceedings, where the merits of specific tariff language appropriate to each utility can be considered, thus deferring

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<sup>5</sup> TURNs recommendation regarding spot checking was a very small portion of its overall effort.

consideration of its recommendations rather than rejecting them on the merits. TURN represents that the Commission did not address the merits of its spot checking proposal, but deferred it to the Commission's management. TURN also points out that the Commission ordered the utilities to explore providing bill calculation services to master-meter customers in their next revenue requirements proceedings as a possible way to ensure that tenants are correctly billed, and receive any discounts or refunds to which they are entitled. TURN states that it supported this provision of the PD as a reasonable alternative approach to addressing discount, refund, and other billing-related problems, over the objection of other active parties. As TURN represents, the Commission acted on this recommendation to a limited degree.

TURN contends that it successfully argued that the PD should be modified to provide that the tenant refund distribution methodology for special rebate programs should be addressed in the proceeding in which the special program is authorized. TURN states that it supported this recommendation of the Sempra Utilities (SoCalGas and SDG&E) in its reply brief, and argued that the PD should include it as an additional means of ensuring that submetered tenants receive the benefits of special rebate programs to which they are entitled. The recommendation TURN supported was adopted.

Lastly, TURN states that it joined Latino Issues Forum in arguing that the utilities should be required to do more to assist submetered tenants with billing-related concerns than merely refer them to the Commission's Consumer Affairs Branch (CAB). D.04-11-033 required that at a minimum, when utilities receive calls from a submetered MHP tenant regarding billing questions, they provide information about how the utility calculated its bills, since the MHP owner must calculate tenant bills in the same manner. Likewise, D.04-11-033 required the utilities to provide such callers with information regarding eligibility for



programs such as CARE, in addition to referring them to CAB for resolution of complaints. We find that TURN contributed to the adoption of these requirements in D.04-11-033.

**C. Conclusion – Substantial Contribution to D.04-11-033**

As discussed above, TURN made a substantial contribution to D.04-11-033 either by having its recommendations adopted, providing comments on the PD that enhanced the final decision, or helping develop a complete record on matters where it did not prevail. We will now look at whether the compensation requested is reasonable.

**V. Reasonableness of Requested Compensation**

TURN requests \$101,766.79 for its participation in this proceeding, as follows:

**Attorneys Costs**

<b>Attorney</b>	<b>Hours</b>	<b>Rate</b>	<b>Year</b>	<b>Amount</b>
Daniel Edington	27.75	\$190.00	(2003)	\$ 5,272.50
Robert Finkelstein	14.00	\$365.00	(2003)	\$ 5,110.00
	0.50	\$182.50	(2003)	\$91.25
	19.00	\$395.00	(2004)	\$ 7,505.00
	2.5	\$197.50	(2005)	\$493.75
Hayley Goodson	10.75	\$190.00	(2003)	\$ 2,042.50
	217.75	\$190.00	(2004)	\$41,372.50
	15.00	\$ 95.00	(2005)	\$ 1,425.00
Marcel Hawiger	5.75	\$250.00	(2003)	\$ 1,437.50
<b>Subtotal</b>				<b>\$64,750.00</b>

**Expert Witness Costs**

<b>Expert Witness</b>	<b>Hours</b>	<b>Rate</b>	<b>Year</b>	<b>Amount</b>
Jeffrey Nahigian, JBS Energy	134.25	\$125.00	(2003)	\$16,781.25
	134.75	\$140.00	(2004)	\$18,865.00
Expenses				\$172.00
<b>Subtotal</b>				<b>\$35,818.25</b>

**Itemized Direct Expenses**

<b>Expense</b>	<b>Amount</b>
Faxing Expenses	\$1.00
Legal Research (Lexis)	\$483.25
Photocopying Expenses	\$641.20
Postage	\$35.98
Telephone Expenses	\$16.73
Fed Ex Expenses	\$20.38
<b>Subtotal</b>	<b>\$1,198.54</b>

**TOTAL = \$101,766.79**

The components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. Thus, only those fees and costs associated with the customer's work that the Commission concludes made a substantial contribution are reasonable and eligible for compensation.

To assist us in determining the reasonableness of the requested compensation, D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through their participation. This showing assists us in determining the overall reasonableness of the request.

Because D.04-04-043 and D.04-11-033 address policy matters rather than establish specific rates or involve disputes over particular dollar amounts, TURN states that it cannot identify precise monetary benefits to ratepayers. TURN argues that ratepayers benefit when the submetering discount is appropriately set because setting it too high would cause ratepayers to subsidize MHP owners

for the costs of providing submetered service to MHP tenants. TURN also states that setting the discount too low may cause MHP owners to not make necessary capital investments in their submetering systems, causing tenants to suffer from utility service quality beneath that provided to MHP tenants who are utility customers. TURN represents that ratepayers will benefit indirectly from the new consumer protections regarding discounts, rebates and refunds advocated by TURN and adopted in D.04-11-033, and may benefit from submetered tenant participation in special rebate programs designed to encourage energy conservation if system peak demand and/or energy consumption are reduced. We concur with TURN that ratepayers will receive the benefits from D.04-04-043 and D.04-11-033 that it describes above. We also agree that the ratepayer benefits from these decisions and, therefore, TURN's participation in this proceeding, can not be readily quantified. However, TURN's representation benefited a large number of ratepayers over the entire state in several meaningful ways. On a qualitative basis, we find TURN's participation was productive.

Next, we must assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable. TURN documented its claimed hours by presenting a daily breakdown of the hours of its attorneys, accompanied by a brief description of each activity. The hourly breakdown reasonably supports the claim for total hours.

Finally, in determining compensation, we take into consideration the market rates for similar services from comparably qualified persons. We discuss TURN's representatives below.

**a) Daniel Edington**

TURN requests an hourly rate of \$190 for work Edington performed in 2003 in this proceeding. This is the same rate approved by the Commission for his work in 2003 in D.04-05-048, issued in A.01-10-011, and we find this rate reasonable.

**b) Hayley Goodson**

TURN requests an hourly rate of \$190 for work Goodson performed in 2003 and 2004, and for the very limited hours in 2005 she devoted to preparing this request for compensation.<sup>6</sup> This is the same rate approved by the Commission for her work in 2003 and 2004 in D.04-12-033, issued in C.03-07-031, and we find this rate reasonable.

**c) Marcel Hawiger**

TURN requests an hourly rate of \$250 for the limited work performed by Hawiger in this proceeding in 2003. This is the same rate approved by the Commission for his work in 2003 in D.04-05-048, issued in A.01-10-011, and we find this rate reasonable.

**d) Robert Finkelstein**

TURN requests an hourly rate of \$365 for work Finkelstein performed in 2003, and \$395 for work in 2004 and 2005. The rate for 2003 is the same rate approved by the Commission for his work in 2003 in D.03-08-041, issued in R.92-03-050, and we find this rate reasonable. The rate for 2004 is the same rate we approved in D.05-03-016 and we find that rate reasonable here. Due to the

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<sup>6</sup> TURN requests that the Commission apply this same rate to Goodson's work in 2005 included in this compensation request, given the small number of hours involved, but reserves the right to seek a higher rate for Goodson for 2005 in a future compensation request.

very limited number of 2005 hours recorded by Finkelstein, TURN also requests an hourly rate of \$395 for Finkelstein's work in 2005.<sup>7</sup> This too is reasonable.

**e) Jeffrey Nahigian of JBS Energy**

The consulting costs associated with Nahigian's work reflect the actual billing rate charged to TURN. The Commission previously approved an hourly rate of \$125 for Nahigian's work in 2003 in D.03-10-011. TURN requests a \$140 hourly rate for his work performed in 2004. The requested rate is an increase of 12% over 2003. Resolution ALJ-184 provided for an increase of 8% for 2004 over 2003. Therefore, we will use a rate of \$135 for Nahigian for 2004.

The itemized direct expenses submitted by TURN total \$1,370.54.<sup>8</sup> The cost breakdown included with the request shows the expenses to be commensurate with the work performed. We find these costs reasonable.

**VI. Award**

As set forth in the table below, we award TURN \$101,093.04.

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<sup>7</sup> TURN reserves the right to request a higher billing rate for Finkelstein's work in 2005 in other compensation requests.

<sup>8</sup> \$1,198.54 for TURN, plus \$172.00 for Nahigian.

**Attorneys Costs<sup>9</sup>**

<b>Attorney</b>	<b>Hours</b>	<b>Rate</b>	<b>Year</b>	<b>Amount</b>
Daniel Edington	27.75	\$190.00	(2003)	\$ 5,272.50
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	15.00	\$ 95.00	(2005)	\$ 1,425.00
Marcel Hawiger	5.75	\$250.00	(2003)	\$ 1,437.50
<b>Subtotal</b>				<b>\$64,750.00</b>

**Expert Witness Costs**

<b>Expert Witness</b>	<b>Hours</b>	<b>Rate</b>	<b>Year</b>	<b>Amount</b>
Jeffrey Nahigian, JBS Energy	134.25	\$125.00	(2003)	\$16,781.25
	134.75	\$135.00	(2004)	\$18,191.25
Expenses				\$172.00
<b>Subtotal</b>				<b>\$35,144.50</b>

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<sup>9</sup> We note that TURN claimed half of the hours spent on preparing the compensation request, rather than claiming the full amount of hours at half the rate. It followed the same methodology regarding travel time.

**Itemized Direct Expenses**

<b>Expense</b>	<b>Amount</b>
Faxing Expenses	\$1.00
Legal Research (Lexis)	\$483.25
Photocopying Expenses	\$641.20
Postage	\$35.98
Telephone Expenses	\$16.73
Fed Ex Expenses	\$20.38
<b>Subtotal</b>	<b>\$1,198.54</b>

**TOTAL = \$101,093.04**

Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing the 75th day after TURN filed its compensation request and continuing until full payment of the award is made. We direct PG&E, Edison, SDG&E, and SoCalGas, to allocate payment responsibility among themselves based upon their California-jurisdictional gas and electric revenues for the 2003 calendar year, to reflect the year in which the proceeding was primarily litigated. We remind all intervenors that Commission staff may audit their records related to this award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. TURN's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.



## **VII. Waiver of Comment Period**

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

## **VIII. Assignment of Proceeding**

Geoffrey F. Brown is the Assigned Commissioner and Jeffrey P. O'Donnell is the assigned ALJ in this proceeding.

## **Findings of Fact**

1. TURN made substantial contributions to D.04-04-043 and D.04-11-033 as described herein.
2. TURN's requested hourly rates for attorneys and experts, as adjusted herein, are reasonable when compared to the market rates for persons with similar training and experience.
3. The total of the reasonable compensation is \$101,093.04.

## **Conclusions of Law**

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for making substantial contributions to D.04-04-043 and D.04-11-033.
2. TURN should be awarded \$101,093.04 for its contributions to D.04-04-043 and D.04-11-033.
3. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.
4. Within 30 days of the effective date of this decision, PG&E, SDG&E, SoCalGas, and Edison should be required to pay their shares of this award. They

should allocate payment responsibility among themselves based upon their California-jurisdictional gas and electric revenues for the 2003 calendar year.

5. Payment of the award should include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning on the 75<sup>th</sup> day after the January 4, 2005 filing date of TURN's request for compensation, and continuing until full payment is made.

6. This order should be effective today so that TURN may be compensated without further delay.

## **O R D E R**

### **IT IS ORDERED** that:

1. The Utility Reform Network (TURN) is awarded \$101,093.04 as compensation for its substantial contributions to Decisions 04-04-043 and 04-11-033.

2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Gas Company, and Southern California Edison shall pay their shares of this award. They shall allocate payment responsibility among themselves based upon their California-jurisdictional gas and electric revenues for the 2003 calendar year.

3. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning on the 75<sup>th</sup> day after the January 4, 2005 filing date of TURN's request for compensation, and continuing until full payment is made.

4. The comment period on this decision is waived, and these proceedings are closed.

This order is effective today.

Dated April 21, 2005, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
DIAN M. GRUENEICH  
Commissioners

**Compensation Decision Summary Information**

<b>Compensation Decision:</b>	D0504041	<b>Modifies Decision?</b> N/A
<b>Contribution Decision(s):</b>	D0404043, D0411033	
<b>Proceeding(s):</b>	R0303017, I.0303018	
<b>Author:</b>	ALJ O'Donnell	
<b>Payer(s):</b>	PG&E, EDISON, SDG&E, SOCALGAS	

**Intervenor Information**

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier?</b>	<b>Reason Change/Disallowance</b>
TURN	1/24/04	\$101,766.79	\$101,093.04	None	Lower hourly rate in 2004 for Nahigian.

**Advocate Information**

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Daniel	Edington	Atty	TURN	\$190	2003	\$190
Hayley	Goodson	Atty	TURN	\$190	2003/4/5	\$190
Marcel	Hawiger	Atty	TURN	\$250	2003	\$250
Robert	Finkelstein	Atty	TURN	\$365	2003	\$365
Robert	Finkelstein	Atty	TURN	\$395	2004/5	\$395
Jeffrey	Nahigian	Expert	TURN	\$125	2003	\$125
Jeffrey	Nahigian	Expert	TURN	\$140	2004	\$135